

Michigan Office of Administrative Hearings and Rules
Administrative Rules Division (ARD)

MOAHR-Rules@michigan.gov

REQUEST FOR RULEMAKING (RFR)

1. Department:

Treasury

2. Bureau:

Bureau of Tax and Economic Policy

3. Promulgation type:

MCL 24.244 (1)

4. Title of proposed rule set:

Specific Sales and Use Tax Rules

5. Rule numbers or rule set range of numbers:

R 205.1 - R 205.142

6. Estimated time frame:

6 months

Name of person filling out RFR:

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7. Describe the general purpose of these rules, including any problems the changes are intended to address.

Treasury wishes to rescind R. 205.136 in its entirety, because it no longer reflects valid law.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

MCL 205.59(2) in the General Sales Tax Act (GSTA) provides that "The department [of treasury] shall promulgate rules to implement this act pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328," and MCL 205.100(2) in the Use Tax Act (UTA) provides that "Rules shall be promulgated to implement this act under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328." MCL 205.3(b) in the Revenue Act provides further authority for Treasury to promulgate rules, stating that "the department may promulgate rules consistent with this act in accordance with the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, necessary to the enforcement of the provisions of tax and other revenue measures that are administered by the department."

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 205.59(2), MCL 205.100(2), and MCL 205.3(b)

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

MCL 205.59(2) in the GSTA and MCL 205.100(2) in the UTA direct that Treasury "shall" promulgate rules to implement those acts. The use of the term "shall" in a statute infers a mandate.

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

Imagine Entertainment, Inc v Dep't of Treasury, 334 Mich App 658; 965 NW2d 720 (2020) invalidated part of Rule 205.136, and the legislature's recent amendments to the sales and use tax statutes (2023 PA 141 and 142) to bring Michigan law into compliance with the Streamlines Sales and Use Tax Act also conflict with the Rule.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

The general subject matter of the Sales and Use Tax Rules are discussed in various documents published by Treasury. In particular, Revenue Administrative Bulletin 2022-4, "Sales and Use Tax – Food for Human Consumption," (March 31, 2022) addresses the specific subject matter addressed by Rule 205.136.

11. Are the rules listed on the department's annual regulatory plan as rules to be processed for the current year?

Yes. The most recent annual regulatory plan listing is July 1, 2024, through June 30, 2025. Revocation of Rule 205.136 is listed in the plan.

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

MCL 24.244 (1)

A. Explain why the rules are being promulgated under 24.244.

Treasury is revoking in its entirety a rule that no longer reflects valid law.

Based on the information provided in this RFR, MOAHR concludes that there are sufficient policy and legal bases for approving the RFR. The RFR satisfies the requirements of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328, and Executive Order No. 2019-6.